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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2003 MAR 17 P 4: 36

In the Matter of )

Dear 2000, Inc. )

) MUR 5180  
)

**SENSITIVE**

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

Find reason to believe that the Jewish Press, Inc. made a prohibited contribution to Dear 2000, Inc. in violation of 2 U.S.C. § 441b(a). Find reason to believe that Dear 2000, Inc. accepted a prohibited contribution from the Jewish Press, Inc. in violation of 2 U.S.C. § 441b(a).

II. BACKGROUND

On February 20, 2002, the Federal Election Commission (the "Commission") found reason to believe that Dear 2000, Inc. (the "Committee") and Abraham Roth, as treasurer, violated 2 U.S.C. §§ 434(b)(4)(A) and 434(b)(5)(A) by failing to disclose campaign expenditures associated with at least six advertisements placed in the *Jewish Press* newspaper. In its response to the complaint, the Committee denied that it authorized or paid for the advertisements. The Commission authorized an investigation and issued document subpoenas and interrogatories to the Committee and the newspaper to determine who authorized and paid for the advertisements. Additionally, the Commission authorized this Office to depose Abraham Roth.

1    **III.    LAW**

2            It is unlawful for a corporation to make a contribution or expenditure, including any  
3    direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services,  
4    or anything of value, in connection with any election to any political office. 2 U.S.C. § 441b. In-  
5    kind contributions include advertising services, services offered free of charge and services  
6    offered at less than the usual and normal charge. 11 C.F.R. §100.7(a)(1)(iii); *see* 2 U.S.C.  
7    § 431(8)(i).

8            A corporation in its capacity as a commercial vendor may extend credit to a candidate, a  
9    political committee or another person on behalf of a candidate or political committee provided  
10   that the credit is extended in the ordinary course of the corporation's business and the terms are  
11   substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size  
12   of obligation. 11 C.F.R. § 116.3(b). In determining whether credit was extended in the ordinary  
13   course of business, the Commission will consider whether the commercial vendor followed its  
14   established procedures and its past practice in approving the extension of credit, whether the  
15   commercial vendor received prompt payment in full if it previously extended credit to the same  
16   candidate or political committee, and whether the extension of credit conformed to the usual and  
17   normal practice in the commercial vendor's trade or industry. 11 C.F.R. § 116.3(c). A  
18   corporation may not settle a debt incurred by a candidate, a political committee or another person  
19   on behalf of a candidate or political committee for less than the entire amount owed on the debt  
20   unless the corporation has treated the debt in a commercially reasonable manner and the  
21   requirements of 11 C.F.R. § 116.7 or 11 C.F.R. § 116.8, as appropriate, are satisfied. 11 C.F.R.  
22   § 116.4(b).

1 **IV. INVESTIGATION**

2 The focus of the investigation was on determining who authorized and paid for the  
3 advertisements published in the *Jewish Press*. The Commission issued subpoenas requesting  
4 documents and answers to interrogatories to the Committee and the *Jewish Press*. As a result of  
5 our investigation, this Office has determined that a Committee employee authorized the  
6 advertisements and that the *Jewish Press* was never paid.

7 **A. Committee Response**

8 In its response to the subpoena, the Committee did not produce any documents. With  
9 respect to the interrogatory seeking the identity of the individual who arranged the purchase of  
10 print advertisements, the Committee stated that it lacked sufficient information to make such an  
11 identification. Attachment 1. Moreover, the Committee responded either in the negative or that  
12 it lacked sufficient information to respond to the remainder of the interrogatories dealing with  
13 campaign advertising practices. *Id.*

14 The Committee's efforts to obtain information and the reasons for its apparent inability to  
15 answer the subpoena were questioned during the deposition of Abraham Roth.<sup>2</sup> Mr. Roth  
16 maintained that he did not have any knowledge of the placement of advertisements in the *Jewish*  
17 *Press*. Attachment 3 at 2-3. When asked whether the Committee had any records of any  
18 payment being made to the *Jewish Press* for advertisements, Mr. Roth said, "I can't tell you for  
19 sure if we did or didn't write a check for *Jewish Press*. It could be for some other things, but I  
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<sup>2</sup> Since the subpoena response seemed inadequate, this Office sent a letter to Mr. Roth on April 19, 2002 explaining that "we do not find your responses acceptable and believe that in the exercise of due diligence you can answer the document request and questions." Attachment 2. Mr. Roth did not reply to this letter and when asked why he failed to reply at the deposition, he said that he figured he would answer the letter with his deposition testimony, which occurred on April 24, 2002. Attachment 3 at 9-10.

1 did not get an invoice for these ads. That I do remember clearly.” *Id.* at 6. Mr. Roth was also  
2 questioned about whether and to what extent he searched the Committee’s records to be sure that  
3 there were no invoices related to the *Jewish Press*. Mr. Roth stated that he performed a search of  
4 the records and that his search did not reveal any invoices. *Id.* at 10. Mr. Roth also told us that  
5 he inquired of the *Jewish Press* to learn who placed the advertisements, but that the newspaper  
6 could not give him an answer because they did not know who requested the advertisements be  
7 published. *Id.* at 10-11. Mr. Roth said that he did not ask the *Jewish Press* who paid for the  
8 advertisements because “It was very clear to me that it was not paid for. I didn’t see any purpose  
9 in asking anything of that sort.” *Id.* at 11. When questioned about whether he asked the *Jewish*  
10 *Press* to search their records to determine from whom they received funds to publish the  
11 advertisements, Mr. Roth testified that “I’m not 100 percent sure that I asked this question  
12 directly, but I pretty much recollect that they told me that they were unpaid.” *Id.* at 12.

13 However, other materials discovered during the investigation suggested that the  
14 Committee’s campaign manager, Harris Leitstein, placed the advertisements with the newspaper.  
15 Attachment 4. Mr. Leitstein was contacted by a Commission investigator and acknowledged that  
16 he had authorized the advertisements and that Mr. Roth should have received the invoices  
17 through the billing system in place with the Committee. Attachment 5 at 2. Mr. Leitstein stated  
18 that the billing system was set up so that Mr. Roth would have received the bills directly. *Id.*  
19 Mr. Leitstein did not know, however, whether Mr. Roth did, in fact, receive the invoices. *Id.*

20 **B. *Jewish Press* Response**

21 The *Jewish Press*’ subpoena response included an August 23, 2000 memorandum on the  
22 Committee’s letterhead from Harris Leitstein to Heshy Korenblit, the *Jewish Press*’ Display

1 Advertising Manager, thanking him for placing unspecified advertisements and listing future  
2 advertisements. Attachment 4. The *Jewish Press* submitted an undated set of invoices attached  
3 to a September 8, 2000 letter from Mr. Korenblit to "Dear 2000 . . . Attention: Accounts  
4 Payable" for six advertisements which ran from August 18, 2000 to September 8, 2000.<sup>3</sup>  
5 Attachment 6. The invoices totaled \$23,760 after the *Jewish Press* applied unspecified credits  
6 totaling \$15,840.<sup>4</sup> *Id.* The *Jewish Press* submitted another set of invoices, which were also  
7 undated, directed to the Committee for costs associated with a total of seven advertisements run  
8 in the newspaper between August 18, 2000 and November 3, 2000, and for which the Committee  
9 was billed a total of \$46,200.<sup>5</sup> Attachment 7. The *Jewish Press* did not submit any information  
10 related to an advertisement entitled "Noach Dear for Congress" dated October 27, 2002, that was  
11 attached to the complaint.<sup>6</sup> The October 27, 2000 advertisement appears to be identical in size  
12 and content to the November 3, 2000 advertisement, except that the November 3, 2000  
13 advertisement contains the disclosure, "Paid for by Dear 2000, Inc. Abe Roth, Treasurer."  
14 Attachment 8. This chart summarizes the information on the advertisements we have received:

<sup>3</sup> There were a total of five advertisements attached to the complaint. The invoices attached to the September 8, 2000 letter included costs associated with three of the advertisements noted in the complaint. Those advertisements were: "Noach Dear Shares Your Values," dated September 1, 2000, "Vouchers," dated September 8, 2000, and "Jerusalem," dated September 8, 2000. Attachment 6 and MUR 5180 Complaint. Also included among the invoices attached to the September 8, 2000 letter were three other advertisements that this Office previously did not know about. They were: "Share Your Values," dated August 18, 2000, "School Vouchers," August 25, 2000, and "Vote for Congress," dated September 1, 2000. *Id.*

<sup>4</sup> The letter from Mr. Korenblit did not explain the basis for the credits. It only indicated that previous invoices to the Committee should be disregarded because they contained incorrect amounts due. Attachment 6. However, Mr. Leitstein, the Committee's campaign manager, told our investigator that he did not recall anything about a "discount" for the advertisements. Attachment 5 at 2. He said that sometimes if ads were paid for up front they would receive a discount. *Id.* But, we have no evidence that the advertisements were paid at all.

<sup>5</sup> These invoices included costs associated with a fourth advertisement attached to the complaint, i.e., "Noach Dear for Congress," dated November 3, 2000, plus the six advertisements invoiced with the September 8, 2000 letter. Attachment 7 and MUR 5180 Complaint.

<sup>6</sup> This was the fifth advertisement attached to the complaint.

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<b><i>Ads Known to OGC</i></b>	<b>Attached to Complaint</b>	<b>Invoices included with Sept. 8<sup>th</sup> Letter (Attachment 6)</b>	<b>Ad Costs Before Credit</b>	<b>Ad Costs After Credit</b>	<b>Amount of Credit</b>	<b>Undated Invoices (Attachment 7)</b>	<b>No Information Submitted</b>
<b><i>8/18/00 "Share Your Values"</i></b>		Yes	\$6,600	\$3,960	\$2,640	Yes	
<b><i>8/25/00 "School Vouchers"</i></b>		Yes	\$6,600	\$3,960	\$2,640	Yes	
<b><i>9/1/00 "Vote for Congress"</i></b>		Yes	\$6,600	\$3,960	\$2,640	Yes	
<b><i>9/1/00 "Dear Shares Values"</i></b>	Yes	Yes	\$6,600	\$3,960	\$2,640	Yes	
<b><i>9/8/00 "Vouchers"</i></b>	Yes	Yes	\$6,600	\$3,960	\$2,640	Yes	
<b><i>9/8/00 "Jerusalem"</i></b>	Yes	Yes	\$6,600	\$3,960	\$2,640	Yes	
<b><i>10/27/00 "Dear for Congress"</i></b>	Yes						Yes
<b><i>11/3/00 "Dear for Congress"</i></b>	Yes		\$6,600			Yes	
<b>Totals</b>			<b>\$46,200</b>	<b>\$23,760</b>	<b>\$15,840</b>		

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3 As indicated on the chart, the total cost of the advertisements (without credits) that we could  
4 confirm was \$46,200. However, that total cost is likely higher because, due to the similarities  
5 between the October 27, 2000 and November 3, 2000 advertisements, we believe the cost of the  
6 October 27, 2000 advertisement was, or should have been, \$6,600 (or \$3,960 if a credit was

1 applied and there was a valid basis for the credit). Therefore, this Office calculates that costs  
2 associated with the eight advertisements known to this Office may be as high as \$52,800.

3 **V. ANALYSIS**

4 As a result of the information obtained during our investigation, this Office believes that  
5 the Committee authorized the advertisements but that the *Jewish Press* was not paid.<sup>7</sup>

6 Moreover, it appears that the *Jewish Press* made a prohibited contribution to the Committee. It  
7 also appears that the Committee accepted a prohibited contribution from the *Jewish Press*.

8 The *Jewish Press* is incorporated in New York and corporations may not contribute,  
9 whether directly or indirectly, to federal candidates. 2 U.S.C. § 441b. The *Jewish Press*  
10 provided advertising services to the Committee in support of candidate Noach Dear's race for  
11 election to Congress and the cost of those advertising services were not paid for by or on behalf  
12 of the Committee, therefore an in-kind contribution resulted. 2 U.S.C. § 431(8)(i) and 11 C.F.R.  
13 § 100.7(a)(1)(iii). Based on the information this Office received in response to the *Jewish Press*  
14 subpoena, it appears that the value of the advertisements, and thus the in-kind contribution, could  
15 be as high as \$52,800. Nonetheless, we do not know whether the *Jewish Press* was seeking

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<sup>7</sup> Although the Committee did not put forth an explanation, this Office's review of the correspondence and the testimony of Mr. Roth show that the campaign operated from more than one location. This suggests that the *Jewish Press* invoices may not have been forwarded from campaign headquarters to Mr. Roth. Mr. Roth testified that he worked out of his private accounting firm office located at 5612 18<sup>th</sup> Avenue, Brooklyn, New York 11204. Disclosure reports that the Committee filed with the Commission also lists this 18<sup>th</sup> Avenue address. However, the Committee's letterhead lists a different address. Specifically, the August 23, 2000 memorandum from Mr. Leitstein shows the Committee's address as 4702 16<sup>th</sup> Avenue, Brooklyn, New York 11204. Attachment 4. The September 8, 2000 *Jewish Press* correspondence from Mr. Korenblit and the associated invoices are addressed to "Dear 2000, Attention: Accounts Payable," at the 16<sup>th</sup> Avenue address. Attachment 6. Nonetheless, even if the *Jewish Press* invoices were not forwarded to Mr. Roth, this Office does not believe that a Committee internal administrative failure alleviates either the Committee's duty to pay for the advertisements or the *Jewish Press*' responsibility to treat a resulting debt in a commercially reasonable manner.

1 immediate payment for the advertisements or whether they were provided on credit.<sup>8</sup> Nor do we  
2 have any information on the *Jewish Press*' advertising policies or its credit extension and debt  
3 collection practices. 11 C.F.R. § 116.4(b). Therefore, this Office recommends the Commission  
4 find reason to believe that the *Jewish Press* made a prohibited contribution to the Committee in  
5 violation of 2 U.S.C. § 441b(a). This Office also recommends that the Commission find that the  
6 Committee accepted a prohibited contribution from the *Jewish Press* in violation of 2 U.S.C.  
7 § 441b(a).

8 **VI. DISCUSSION OF PROPOSED INVESTIGATION**

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<sup>8</sup> As set forth in the First General Counsel's Report, this complaint-generated matter initially appeared to involve the Committee's failure to disclose campaign expenditures in violation of 2 U.S.C. §§ 434(b)(4)(A) and 434(b)(5)(A). First General Counsel's Report, approved February 20, 2002. However, based on the *Jewish Press*' responses to our document request and interrogatories, it became apparent to this Office that the *Jewish Press* may have violated certain provisions of the Act.



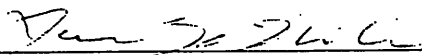
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VII. RECOMMENDATIONS

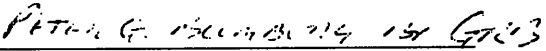
1. Find reason to believe that the Jewish Press, Inc. made a prohibited contribution to Dear 2000, Inc. in violation of 2 U.S.C. § 441b(a);
2. Find reason to believe that Dear 2000, Inc. and Abraham Roth, as treasurer, accepted a prohibited contribution in violation of 2 U.S.C. § 441b(a);
3. Approve the attached Factual and Legal Analyses;
4. Approve the appropriate letters.

Date

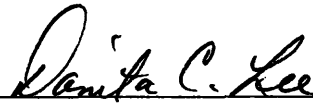
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Attachments

1. Dear 2000 subpoena response
2. Letter to Abraham Roth dated April 19, 2002
3. Excerpt from Abraham Roth deposition pertaining to MUR 5180
4. Memorandum from Harris Leitstein dated August 23, 2000
5. Report of Investigation dated July 19, 2002
6. Letter dated September 8, 2000 from Heshy Korenblit and *Jewish Press* invoices
7. *Jewish Press* invoices
8. October 27, 2000 and November 3, 2000 advertisements
9. Factual and Legal Analyses